

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

CIVIL ACTION NO. _____

BARRY SPENCER,
Plaintiff,

v.

ANNIE DOOKHAN, DANIELLA FRASCA, MARTIN
WALSH, JOHN POLANOWICZ/JUDYANN BIGBY,
JOHN AUERBACH, LINDA HAN, CHARLES SALEMI,
ELIZABETH O'BRIEN, PETER PIRO, DONALD
KEENAN, WILLIAM DWAN, PETER CHU, BRIAN
MAHONEY, TIMOTHY LYNCH, JOHN RYLE, DANIEL
CONLEY and SUFFOLK COUNTY DISTRICT
ATTORNEY'S OFFICE, also WILLIAM EVANS,

Defendants.

NOTICE OF REMOVAL
(PURSUANT TO 28 U.S.C. § 1441)

The Defendant, Martin Walsh, through his undersigned counsel, hereby gives notice of the removal of this action pursuant to 28 U.S.C. §§ 1441, 1446 and Local Rule 81 of the United States District Court for the District of Massachusetts from the Suffolk County Superior Court, where this action is currently pending. In Suffolk County Superior Court, the case is docketed as Civil Action No. 1684CV02843 ("State Court Action") and has the same caption as above.

In support of this Notice of Removal, the Defendant states:

1. On September 13, 2016, the Plaintiff commenced the State Court Action.

2. On October 13, 2016, the Boston City Clerk's Office received a copy of Plaintiff Barry Spencer's Complaint.¹ (See Complaint - attached hereto as Exhibit 1.) Along with his Complaint, Plaintiff served the following: (i) Civil Action Coversheet (Exhibit 2), (ii) Affidavit of Indigency (Exhibit 3); (iii) Notice of Waiver of Court Costs and Request for Payment to be Withdrawn from Account (Exhibit 4); (iv) Motion for Service Process by Suffolk County Sheriff Department Civil Process Division (Exhibit 5); (v) Motion to Appoint Designee for Defendants (Exhibit 6); (vi) Civil Tracking Order (Exhibit 7); (vii) Clerk's Notice (Exhibit 8); and (viii) Clerk's Notice (Exhibit 9).

3. Plaintiff's Complaint alleges claims grounded in the Constitution and the laws of the United States. See 28 U.S.C. § 1331. Specifically, the Plaintiff alleges "violation of the Plaintiff's constitutional rights brought pursuant to 42 U.S.C. § 1983." (See Exhibit 1, at 1.) Plaintiff's 122 paragraph Complaint contains ten causes of action; Counts 1 – 9 are for alleged violations of 42 U.S.C. § 1983 and Count 10 alleges a violation of M.G.L. c. 12, § 11I.

4. Plaintiff's claims for relief arise under the Constitution and laws of the United States and therefore are subject to removal under 28 U.S.C. §§ 1331 and 1441(a).

5. This Court has jurisdiction over Plaintiff's federal claims pursuant to 28 U.S.C. § 1331, and to the extent Plaintiff's Complaint may be read to include a state-law claim, the entire action may be removed pursuant to 28 U.S.C. § 1367(a).

6. Removal is appropriate to the district court of the United States for the district and division embracing the place where such action is pending. 28 U.S.C. § 1441(a). Venue is proper in this District. See 28 U.S.C. § 1441(a); 28 U.S.C. § 101.

¹ Be removing the State Court Action, the Defendant is not waiving any defenses he has to the Complaint, including the adequacy of service.

7. Defendant's Notice of Removal is timely as (30) days have not elapsed since Defendant's receipt of Plaintiff's Complaint. See 28 U.S.C. § 1446(b)(1); Novak v. Bank of New York Mellon Trust Co., 783 F.3d 910, 911-14 (1st Cir. 2015).

8. The Superior Court docket does not reflect that the Plaintiff has caused any of the other Defendants to be served. (See Exhibit 10.) See generally 28 U.S.C. § 1446(b)(2)(A).

9. Attached hereto as Exhibit 11 is a true and correct copy of the Notice of Removal that the Defendant shall file in the State Court Action and shall serve a copy thereof on Plaintiff pursuant to 28 U.S.C. 1446(d).

Dated: October 17, 2016

Respectfully submitted,

DEFENDANT MARTIN WALSH

By his attorneys:

Eugene L. O'Flaherty
Corporation Counsel




Nieve Anjomi (BBO# 651212)
Assistant Corporation Counsel
City of Boston Law Department
City Hall, Room 615
Boston, MA 02201
(617) 635-4098
Nieve.Anjomi@boston.gov

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the above document was served upon the following party by mail at the following address:

Barry Spencer II
PO Box 1218
Shirley, MA 01464

10/17/16
Date


Nieve Anjomi